

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
OCT 28 2019
CLERK, U.S. DISTRICT COURT
By _____ Deputy

2:19-CV-191-Z

LORIE DAVIS, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

**ORDER OVERRULING OBJECTIONS,
ADOPTING RECOMMENDATION,
AND
GRANTING PETITION FOR A WRIT OF HABEAS CORPUS**

On October 4, 2019, the United States Magistrate Judge entered findings and conclusions (ECF 5) on the Petition for a Writ of Habeas Corpus filed in this case (ECF 3). The Magistrate Judge RECOMMENDS that the petition be DISMISSED. On October 15, 2019, Petitioner filed objections to the findings, conclusions, and recommendation (ECF 6). After making an independent review of the pleadings, files, and records in this case, the findings, conclusions, and recommendation of the Magistrate Judge, and Petitioner's objections, the Court concludes the findings and conclusions are correct. Petitioner objects that his account balance was lower than what the Magistrate Judge found. But even if this were true, his balance would, under his own calculations, have still been enough for him to pay the \$5.00 filing fee for this case. It is therefore ORDERED that Petitioner's objections are OVERRULED, that the findings, conclusions, and recommendation of the Magistrate Judge are ADOPTED, and that the Petition for a Writ of Habeas Corpus is DISMISSED without prejudice.

Considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts, and Title 28, United States Code section 2253(c), the Court denies a certificate of appealability because Petitioner has failed to make “a substantial showing of the denial of a constitutional right.” *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). The Court ADOPTS and incorporates by reference the Magistrate Judge’s findings, conclusions, and recommendation filed in this case in support of its finding that Petitioner has failed to show (1) that reasonable jurists would find this Court’s “assessment of the constitutional claims debatable or wrong,” or (2) that reasonable jurists would find “it debatable whether the petition states a valid claim of the denial of a constitutional right” and “debatable whether [this Court] was correct in its procedural ruling.” *Id.* at 484.

If Petitioner files a notice of appeal, he must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis* on appeal.

SO ORDERED.

October 28, 2019.



MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE